IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,	)	
	)	2 CA-CR 2007-0223
Appellee,	)	DEPARTMENT B
	)	
v.	)	MEMORANDUM DECISION
	)	Not for Publication
EARNEST LEE BROWN,	)	Rule 111, Rules of
	)	the Supreme Court
Appellant.	)	
	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20051556

Honorable Howard Fell, Judge Pro Tempore

AFFIRMED

Terry Goddard, Arizona Attorney General
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V Á S Q U E Z, Judge.

¶1 After a bench trial, appellant Earnest Lee Brown was convicted of manufacture of a dangerous drug and possession of drug paraphernalia. On appeal, Brown argues there was insufficient evidence to support his conviction on the manufacture of a dangerous drug charge. For the reasons discussed below, we affirm.

Facts and Procedural Background

¶2 We view the evidence presented in the light most favorable to sustaining the conviction. *State v. Cropper*, 205 Ariz. 181, ¶ 2, 68 P.3d 407, 408, *supp. op.*, 206 Ariz. 153, 76 P.3d 424 (2003). On May 21, 2004, Tucson police officers began surveilling Brown's house as part of a special project focusing on methamphetamine drug crimes. They did so because a "meth lab" had been seized from the residence one year earlier, and on information that "subjects . . . were frequenting the residence that were known to use or be involved with methamphetamine."

¶3 When the officers arrived at the residence, they saw two cars parked in the driveway. Within minutes, a man later identified as James Swanson left the house and drove away in one of the cars. The officers followed Swanson and stopped him for speeding. The stop culminated in Swanson's arrest for possession of methamphetamine and drug paraphernalia. Swanson told the officers he had driven to Brown's house to trade marijuana for the methamphetamine he had in his possession and that Brown regularly manufactured the drug in small quantities. The officers obtained a warrant, searched Brown's house, and found glassware and chemicals consistent with methamphetamine manufacture, as well as liquids containing methamphetamine. Brown was arrested and charged with manufacture

of methamphetamine, possession of equipment and chemicals for the purpose of manufacturing a dangerous drug, and possession of drug paraphernalia.

¶4 Brown waived his right to a jury trial and, in the bench trial that followed, Swanson testified against Brown as part of a plea agreement he had entered into with the state. The police officers who had arrested Swanson and had searched Brown's house and an expert on the process of manufacturing methamphetamine also testified at the trial. At the close of the state's case, and again at the conclusion of trial, Brown moved for a judgment of acquittal on all charges pursuant to Rule 20, Ariz. R. Crim. P., arguing the evidence was insufficient. The court denied the motion and found Brown guilty on all counts. Before sentencing, however, the court dismissed the charge of possession of equipment to manufacture methamphetamine, finding it to be a lesser-included offense of manufacturing methamphetamine. The court sentenced Brown to concurrent, mitigated prison terms of 4.5 years for manufacturing methamphetamine and six months for possession of drug paraphernalia.

Discussion

¶5 On appeal, Brown challenges only his conviction for manufacture of a dangerous drug, claiming there was insufficient evidence to prove he had manufactured methamphetamine on or around May 21, 2004, as charged in the indictment. He contends

his conviction violated his constitutional rights to due process and to be found guilty beyond a reasonable doubt of every element of the offense.[1]

¶6 We will not disturb a trial court's determination of guilt in a bench trial "unless there is clear and manifest error." *State v. Turner*, 112 Ariz. 350, 351, 541 P.2d 1152, 1153 (1975). We will not reverse a conviction on the ground of insufficient evidence unless there is a complete absence of probative facts to support the conviction or the judgment is clearly contrary to substantial evidence in the record. *State v. Sanders*, 118 Ariz. 192, 196, 575 P.2d 822, 826 (App. 1978). Evidence is substantial if there is more than a scintilla of proof and is such proof that a reasonable mind "could find guilt beyond a reasonable doubt." *State v. Goswick*, 142 Ariz. 582, 586, 691 P.2d 673, 677 (1984).

¶7 To support Brown's conviction, the state was required to present substantial evidence that he "knowingly" manufactured the dangerous drug methamphetamine. A.R.S. §§ 13-3407(A)(4); 13-3401(6)(b)(xiii). And, "manufacture" is defined as: "produce, prepare, propagate, compound, mix or process, directly or indirectly, by extraction from substances of natural origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis." A.R.S. § 13-3401(17).

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[1]To the extent Brown argues the trial court convicted him without finding he had manufactured methamphetamine on or around that date, we note the trial court is presumed to know and follow the law. *State v. Ramirez*, 178 Ariz. 116, 128, 871 P.2d 237, 249 (1994). We therefore presume that in finding Brown guilty, the court found the crime "was committed beyond a reasonable doubt on or about the date charged in the indictment." *State v. Cummings*, 148 Ariz. 588, 592, 716 P.2d 45, 49 (App. 1985).

¶8 Brown contends "[b]ecause [he] was charged with manufacturing methamphetamine on or about [May 21,] 2004, it was imperative that the state establish *when* [he] manufactured the methamphetamine in relation to when he was charged with manufacturing it." To the extent he is arguing the state must prove the exact date of manufacture, we reject this argument. "If the indictment [and] the evidence . . . reflect the same number of offenses, the State does not need to prove the exact date of the offenses." *State v. Davis*, 206 Ariz. 377, ¶ 61, 79 P.3d 64, 77 (2003). The state's evidence is sufficient if it establishes "that [the crime] was committed beyond a reasonable doubt on or about the date charged in the indictment." *Cummings*, 148 Ariz. at 592, 716 P.2d at 49.

¶9 Here, the state presented more than sufficient evidence from which the court could conclude Brown had manufactured methamphetamine on or around May 21, 2004. Swanson testified that about once a week or every couple of weeks Brown would make a small quantity of methamphetamine and telephone him to come to the house. "Every time" Swanson stopped by the house he would see Brown making methamphetamine—"mix chemicals, shake things and sit there and watch something cook, a beaker thing, stuff cook." Although Swanson could not remember if he had seen Brown making methamphetamine on May 21, 2004, he testified that he had been to Brown's house that day just before his arrest "and traded a little bit of marijuana for a little bit of meth." And Swanson confirmed that at a pretrial interview he had told an investigator that Brown was making methamphetamine when he arrived at the house that day. The officers testified that when they had searched Brown's house they found chemicals and equipment consistent with a methamphetamine

laboratory, including a "two-phase liquid" in one of the containers. And, finally, the criminalist testified that methamphetamine and/or chemicals used to manufacture the drug had been detected on some of the equipment officers had seized and in the two-phase liquid.

¶10 Therefore, even though Swanson could not recall whether he had seen Brown "cooking meth" on May 21, 2004, the state presented strong circumstantial evidence that Brown had manufactured methamphetamine "on or about" that date. As our supreme court has stated, "[t]here is no distinction in the probative value of direct and circumstantial evidence. A conviction may be sustained on circumstantial evidence alone." *State v. Green*, 111 Ariz. 444, 446, 532 P.2d 506, 508 (1975). Thus, there was sufficient evidence to support Brown's conviction for manufacture of a dangerous drug, and the trial court did not err in denying Brown's Rule 20 motion and finding him guilty as charged.

Disposition

¶11 For the reasons stated above, we affirm.

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GARYE L. VÁSQUEZ, Judge

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

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PHILIP G. ESPINOSA, Judge